

REMARKS

Claims 110-137 are pending in this application, with claims 110 and 129 being independent. By this Amendment, Applicant proposes amending claim 129 to correct a minor informality without affecting the claim scope.

For the following reasons, Applicant respectfully requests reconsideration of this application and withdrawal of all of the rejections outstanding in the final Office Action of January 16, 2007.

35 U.S.C. § 102(e) Rejection

Claims 110, 120-122, 124, 129, 130, 135, and 137 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,897,562 to Bolanos et al. (“Bolanos”). Applicant respectfully traverses this rejection.

Independent claim 110 is directed to a surgical instrument used in an endoscopic fundoplication. The instrument includes, among other things, an elongated tube having a proximal end and a distal end, and a distal member coupled proximate the distal end of the tube. The distal member includes a rotatable member having a connected end and a free end and being configured to rotate between a first position in which the free end is located distally of the connected end and a second position in which the connected end is located distally of the free end.

Independent claim 129 is directed to an instrument for folding multiple tissue layers of a body. The instrument includes, among other things, an elongated tube having a proximal end and a distal end, and a distal member configured to fold the multiple tissue layers together. The distal member has a first member having a

proximal end coupled to the distal end of the tubular member and a distal end, and a second member rotatably coupled to the distal end of the first member.

Bolanos discloses a fastening instrument 10 for fastening the lower esophagus to the fundic wall. The instrument 10 includes an elongated body 18 with a fastening assembly 22 on its distal end. Fastening assembly 22 includes a cartridge frame 38 and an anvil 26 pivotally connected to a distal end of cartridge frame 38. A spring 39 biases anvil 26 in an open position, as shown in Fig. 6A, and anvil 26 rotates from the biased, open position to a closed position, shown in Fig. 6B. As detailed below, however, Bolanos does not teach or otherwise suggest the subject matter of independent claims 110 and 129.

Independent Claim 110

With respect to claim 110, the Office Action appears to assert that elongated body 18 and cartridge frame 38 of Bolanos allegedly correspond to the recited “elongated tube” and “rotatable member,” respectively. Applicant respectfully disagrees with the Office Action’s characterization of Bolanos.

For example, cartridge frame 38 cannot correspond to the recited “rotatable member” because, among other reasons, it is not “configured to rotate between a first position in which [its] free end is located distally of [its] connected end and a second position in which the connected end is located distally of the free end,” as recited in claim 110. Instead, cartridge frame 38 of Bolanos always extends distally from the distal end of elongated body 18. Consequently, the distal end of cartridge frame 38 (i.e., alleged by the Office Action as corresponding to the recited “free end”) must always remain distally of the connected end of the cartridge frame 38. For at least this reason, Bolanos does not anticipate the subject matter of independent claim 110.

Independent Claim 129

With respect to claim 129, the Office Action asserts that elongated body 18, the distal end of elongated body 18, and cartridge frame 38 of Bolanos allegedly correspond to the recited “elongated tube,” “first member,” and “second member,” respectively. Applicant respectfully disagrees with the Office Action’s characterization of Bolanos.

First, cartridge frame 38 of Bolanos cannot correspond to the recited “second member” because, among other reasons, it is not rotatably coupled to the distal end of elongated body 18. Instead, as best shown in Fig. 3 and discussed in col. 5, lines 21-22 and 37-42, cartridge frame 38 of Bolanos is secured to elongate body 18 via a block member 37 and a collar 41. Consequently, cartridge frame 38 cannot rotate in any direction relative to elongated body 18.

Moreover, Bolanos does not teach or otherwise suggests, among other things, “a first member having a proximal end coupled to the distal end of the tube and a distal end” to which a second member is rotatably coupled, as recited in claim 129. The Office Action’s allegation that the distal end of elongated body 18 corresponds to the recited “first member” is clearly erroneous and unsupportable because elongated body 18 cannot correspond to both the recited “elongated tube” and “first member.”

Furthermore, while the Office Action asserts that elongated body 18 and cartridge frame 38 of Bolanos allegedly correspond to the recited “distal member,” elongated body 18 and cartridge frame 38, taken either singularly or in combination, are not “configured to fold the multiple tissue layers together,” as recited in independent claim 129. Therefore, elongated body 18 and cartridge frame 38 cannot correspond to the recited “distal member” of claim 129.

For at least the reasons set forth above, independent claims 110 and 129 patentably distinguish from Bolanos. Thus, Applicant respectfully requests reconsideration and withdrawal of this 35 U.S.C. § 102(e) rejection.

35 U.S.C. § 103(a) Rejections

Claims 111-119, 123, 125-128, 131-134, and 136 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bolanos, in view of one or more of: U.S. Patent No. 5,403,326 to Harrison et al. (“Harrison”); U.S. Patent No. 5,562,701 to Huitema et al. (“Huitema”); and U.S. Patent No. 5,797,960 to Stevens et al. (“Stevens”). See paragraphs 4-7 of final Office Action.

Without necessarily agreeing to these rejections, Applicant notes that dependent claims 111-119, 123, and 125-128 depend, either directly or indirectly, from independent claim 110, and dependent claims 131-134 and 136 depend, either directly or indirectly, from independent claim 129. Also, Harrison, Huitema, and Stevens, taken either alone or in combination, do not supply the deficiency of Bolanos. Therefore, dependent claims 111-119, 123, 125-128, 131-134, and 136 should also patentably distinguish from the cited references at least by virtue of their respective dependency from independent claims 110 and 129. Thus, Applicant respectfully requests reconsideration and withdrawal of these rejections under 35 U.S.C. § 103(a).

Conclusion

Applicant respectfully requests that the amendment to claim 129 under 37 C.F.R. § 1.116 be entered by the Office, placing all pending claims 110-137 in condition for allowance. The proposed amendment to claim 129 merely corrects an obvious error and, therefore, does not raise new issues or necessitate the undertaking of any

additional search of the art by the Office. Therefore, this amendment should allow for immediate action by the Office. Furthermore, Applicant respectfully submits that the entry of the amendment would place the application in better form for appeal, should the Office dispute the patentability of the pending claims.

In view of the foregoing Remarks, Applicant respectfully requests entry of this amendment under 37 C.F.R. § 1.116, withdrawal of all of the outstanding rejections, and timely allowance of pending claims 110-137.

The final Office Action contains a number of statements and characterizations regarding the claims and the related art. Applicant declines to necessarily subscribe to any statement or characterization in the final Office Action, regardless of whether it is addressed above.

Should the Examiner wish to discuss this case, she is invited to call the undersigned at 202-408-4140.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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By:


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